

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8850 of 2015(O&M)
Date of Decision: 02.12.2019

Fariad Singh

.....Petitioner

Versus

Balwinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Garg, Advocate for
Mr. J.S. Gill, Advocate
for the petitioner.

None for the respondent(s).

RAJ MOHAN SINGH, J.

[1]. Petitioner has laid challenge to the order dated 19.07.2011 passed by Additional District Judge, Ferozepur, vide which application under Section 5 of the Limitation Act filed by the petitioner was dismissed. As a consequence of the said order, the appeal was also dismissed.

[2]. In normal circumstances, condonation of delay has to be liberally construed unless and until, the case of the applicant/parties based on falsehood.

[3]. In the instant case, the facts are glaring enough to be

taken cognizance of. Against an *ex parte* judgment and decree, defendant had two options. Defendant could have sought setting aside of the judgment and decree under Order 9 Rule 13 CPC or could have filed an appeal before the Lower Appellate Court.

[4]. In the instant case, an application was filed by the defendant/petitioner under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 10.03.2004 passed by the trial Court. The application was dismissed in default vide order dated 25.04.2008. An application for restoration of the application under Order 9 Rule 13 CPC was also dismissed on 09.11.2009. The applicant/petitioner had taken six months time to file the said application for restoration.

[5]. Thereafter, petitioner filed civil revision before the High Court against the order dated 09.11.2009 passed by the trial Court. The said revision petition was got dismissed as withdrawn vide order dated 10.12.2009. An application for recalling the said order dated 10.12.2009 was also filed and the same was dismissed by the High Court on 19.07.2010. It can be noticed that the revision petition was got dismissed as withdrawn on 10.12.2009 and the application for recalling the said order was moved only on 17.04.2010 i.e. after a delay of seven months. SLP was filed by the petitioner and the same

was also got dismissed as withdrawn from the Hon'ble Apex Court vide order dated 01.09.2010. Petitioner has pleaded before the trial Court that he did not file any such SLP in the Hon'ble Apex Court, nor took an advice from the counsel.

[6]. Perusal of the record would show that the case of the petitioner is based on falsehood. He delayed the proceedings at every juncture. After availing remedy under Order 9 Rule 13 CPC, petitioner cannot avail the remedy of appeal particularly with the background on record. The conduct of the petitioner is not such which would give rise to any such indulgence by this Court. The conduct of the petitioner has been deprecated by the trial Court in para No.9 of the impugned order, which in my considered opinion, cannot be interfered with.

[7]. In view of above, this revision petition is found to be totally devoid of merits and is accordingly dismissed.

02.12.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No